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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	DOCKET FILE COPY ORIGINAL
Implementation of the	)	
Local Competition Provisions of the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	
	)	

REPLY COMMENTS OF CABLE & WIRELESS USA, INC.

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SUMMARY

In these reply comments, C&W USA will focus on several proposals made by the ILECs in their comments which would result in the steady erosion of the competitive inroads which actually have been made -- against all odds -- into the incumbents' monopoly strongholds. The ILECs' proposals effectively would preclude the continuing development of meaningful competition in the local markets, including the market for advanced services, and, therefore, the ability of all competitors to offer consumers a full range of integrated telecommunications services packages throughout the country.

Specifically, C&W USA will address various ILEC interpretations of the "impair" standard which are inconsistent with both the letter and the spirit of the 1996 Act -- such as the attempt to replace the "impair" standard with an "any potential substitute" standard. C&W USA will demonstrate that these several proposed interpretations simply make the impairment standard impossible to satisfy. In addition, C&W USA disputes the ILECs' attempts to conflate the "essential facilities doctrine" with the "impair" standard. Section 251(d)(2) reveals *no* evidence of *any* Congressional intention to codify the essential facilities doctrine, and, indeed, is flatly inconsistent with the FCC's conclusion that the Act was intended to promote all three methods of entry.

C&W USA also will respond to ILEC proposals to discard the Commission's practice of applying Section 251(d) on a nationwide basis, which would effectively eviscerate the "national policy framework" established by Congress to promote competition. As C&W USA discusses below, the record demonstrates that national, uniform, minimum unbundling requirements remain essential to the development of local competition -- particularly for carriers like C&W USA which market to and serve customers in multiple locations throughout the country. Only a national UNE scheme will permit carriers with existing and potential geographically diverse

customer bases to implement the many differing entry strategies expressly contemplated in the 1996 Act.

Finally, certain commenters -- including the ILECs -- have urged the Commission to remove from, or refuse to include, on the UNE list certain elements critical to the provision of advanced services -- including combinations of UNEs which are crucial to the development of genuinely competitive, integrated voice and data services. As C&W USA will discuss below, the record demonstrates that elements vital to the provision of competitive advanced broadband services satisfy the "impair" standard and must be provided on an unbundled basis. Further, unbundled access to UNE combinations, which, the record demonstrates, is essential for the mass development of local competition, more particularly enables competitors to develop and offer innovative packages of services for end users.

In sum, C&W USA urges the Commission to keep in mind that Section 251 mandates three modes of entry, and that the Act neither explicitly nor implicitly expresses a preference for one particular entry strategy. In blatant contravention of these goals, the ILECs' proposals are based on the notions that facilities-based entry is the *only* relevant goal, that all entry strategies must be constructed accordingly, and, effectively, that provision of service based on UNEs should be discouraged and rendered virtually impossible. The competition that will result from the ILEC's suggested interpretation of Section 251 will be dramatically restricted: few carriers will be able to enter the local market, and competitive alternatives to ILEC services will be limited to narrow geographic regions and high-volume customers. If, however, the Commission is guided by the proposals of C&W USA and other competitive carriers, competitive entry will increase for carriers with a variety of business plans, leading to broad-based competition, a functioning wholesale market, and realization of the procompetitive goals of the 1996 Act.

TABLE OF CONTENTS

Before the
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In the Matter of	)	
	)	
Implementation of the	)	
Local Competition Provisions of the	)	CC Docket No. 96-98
Telecommunications Act of 1996	)	
	)	

REPLY COMMENTS OF CABLE & WIRELESS USA, INC.

C&W USA, by its attorneys, hereby respectfully replies to the comments filed on May 26, 1999 in the above-captioned proceeding. As a preeminent provider of Internet and long distance services with ongoing plans to integrate and upgrade its networks in order to provide a full range of integrated telecommunications services packages to consumers, C&W USA remains intensely interested in the outcome of this proceeding.

INTRODUCTION

C&W USA is pleased that commenters -- with the notable exception of incumbent LECs -- overwhelmingly support adoption of C&W USA's proposals with regard to the appropriate interpretation of the Section 251(d) "necessary" and "impair" standards, and the Commission's tentative proposal to adhere to its practice of identifying a minimum set of network elements that must be unbundled on a nationwide basis. As C&W USA discussed in detail in its initial comments, competitive integrated services providers like C&W USA must be able to compete in all markets, including the local market, if they are to continue to thrive and to catalyze competition and innovation.

As many commenters have demonstrated, reliance on unbundled network elements is the only practical means by which carriers like C&W USA can achieve early and effective market entry into the local markets. C&W USA submits that application of the "necessary" and "impair" standards promoted by C&W USA and other competitors to create a minimum set of uniform national standards for UNEs and UNE combinations is the only means by which the goals of the 1996 Act can be realized.

I. THE ILECs' INTERPRETATIONS OF THE "IMPAIR" STANDARD ARE INCONSISTENT WITH THE LETTER AND SPIRIT OF THE 1996 ACT.

In its *Iowa Utilities Board* decision the Supreme Court instructed the Commission to substantiate the "necessary" and "impair" standards and determine which network elements must be unbundled in a way that is "rationally related to the goals of the [1996] Act."[1] The paramount goal of the Act is to establish competitive options for providers of local telecommunications services.[2] As C&W USA and other commenters have explained, the FCC must interpret the "necessary" and "impair" standards in a way that ensures the availability of *all* procompetitive local entry options -- that is, of service resale, use of unbundled network elements (wholesale entry), and facilities-based provision of service. The simultaneous availability of all three entry strategies -- and most particularly the wholesale market entry option of Section 251(c)(3) -- is crucial to rapid entry by competitors in all telecommunications markets, and especially those markets that are inextricably linked to local services.

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1 *AT&T Corp. v. Iowa Utils. Bd.*, 119 S. Ct. 721, 734 (1999) ("*Iowa Utilities Board*").

2 *See* S. Conf. Rep. No. 104-230, 104th Cong. 1 (1996) (explaining that the 1996 Act erects a "procompetitive deregulatory national framework designed to accelerate rapid private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition").

The efforts by the ILECs to destroy the viability of the UNE method of entry through extreme and perverse definitions of the "impair" standard must fail. While, as the Supreme Court concluded, the "impair" standard cannot be interpreted as being satisfied by the absence of a competitively viable substitute without *any* increase in cost or increase in quality, correspondingly, logic dictates that satisfaction of that standard cannot be precluded by the presence of just one potential substitute, regardless of the substitute's quality or timely availability. C&W USA urges the Commission, in giving substance to the framework created by Section 251(d)(2), to refuse to be guided by the extreme principles advocated by the ILECs. Quite simply, and despite the ILECs' continuing and misguided efforts to rely on the essential facilities doctrine as support for their assertions, there is no basis in either the letter or the spirit of the 1996 Act for the ILEC interpretations of the "impair" standard which C&W USA discusses below.

A. The "Impair" Standard Must Be Interpreted So As To Promote Immediate, Widespread, And Viable Local Competition, As Mandated By The 1996 Act.

As C&W USA and other competitive carriers demonstrated in their initial comments, the "impair" standard can be satisfied only when the industry develops a fully competitive wholesale market for functionalities that are commercially available, in sufficient quantities, to serve as direct competitive substitutes for elements supplied by ILECs.[3] These commenters generally agree that in a fully competitive wholesale market, non-ILEC alternatives to ILEC UNEs must be usable interchangeably and seamlessly with the incumbent's UNE to provide service to the end user -- that is, these substitutes must be readily available without higher costs, lower quality,

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[3] *See, e.g.*, ALTS at 12, CompTel at 9-16; Excel at 9; Nextlink at 7; Qwest at 15, 33.

or delays in service provision.[4] In sum, the record generally supports C&W USA's conclusion that only when the fully competitive and viable wholesale market develops will the incumbents no longer be able to reap the anticompetitive benefits of their networks' economies of density, connectivity, and scale.

1. The "impair" standard must be premised on the widespread availability of alternatives to ILEC-elements of comparable quality.

In a clear effort to nullify the "impair" standard, however, the ILECs have offered interpretations of that standard which would, in effect, "impair" any meaningful application of Section 251(d)(2) and the procompetitive objectives of the Act. Bell Atlantic, for example, has suggested that the existence of even one competitor "using its own element to provide competing telecommunications service" demonstrates that that ILEC UNE need not be unbundled.[5] Similarly, U S West has asserted that evidence that "one or more competitors is obtaining an element from a non-ILEC source conclusively demonstrates that mandatory unbundling is not appropriate in that market."[6]

Both of these arguments are entirely without merit, and, indeed, would preclude the possibility of meaningful competition. The presence of a single entity self-provisioning a network element or even of "one or more" alternative, non-ILEC sources simply cannot be considered a reasonable or effective substitute for an ILEC UNE. C&W USA notes that the mere presence of alternate elements does not mean that requesting carriers actually have access to those substitutes: that is, that a CLEC builds facilities does not necessarily mean that that

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4 *See, e.g.*, ALTS at 28; Choice One at 21-27; CompTel at 33; Excel at 9; Qwest at 16, 22.

5 Bell Atlantic at 14.

6 U S West at 12.

CLEC is offering access to competitors. Moreover, even if more than one alternative source of the element exists *and* the element actually is available for requesting carriers, the ILEC alternative is rendered irrelevant if the competitor cannot use the element *without any material diminishment in quality* to provide service to the end user. Other factors, besides mere "availability" -- particularly if limited to the extent contemplated by Bell Atlantic and U S West -- must be considered in order to support a meaningful impairment analysis.

2. The "impair" standard must contemplate whether lack of access to ILEC UNEs will result in a delay to market entry.

In their comments, competitive carriers generally agreed that the "impair" standard must include an examination of whether a denial of access would materially delay the ability of a competitor to enter the local market and provide service to end users.[7] As C&W USA has noted, a paramount goal of the 1996 Act is the promotion of "*rapid* competition in the local telecommunications market."[8] The ILECs, however, have entirely ignored the importance of length of time-to-market as a critical factor in determining whether lack of access to ILEC network elements would impair the ability of competitors to provide service; this represents a blatant disregard of the principles of the Act and an exercise of egregious self-interest.

Indeed, in this regard, Ameritech actually goes so far as to build a delay of *two years* into its impairment standard: in its comments Ameritech has suggested that a competitor will not be impaired in its ability to provide service if it can deploy alternative elements within two years of

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7 *See, e.g.*, ALTS at 13-14; Choice One at 21-27; Columbia t 6-7; CompTel at 9-10; MCI WorldCom at 15.

8 *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 15499, ¶ 2 (1996) ("*Local Competition First Report and Order*") (emphasis added).

its decision to do so.[9] BellSouth, not quite so greedy as Ameritech, has suggested that competition "reasonably" may be delayed for one year.[10] Similarly, other ILECs -- namely, Bell Atlantic and U S West -- have suggested that unbundling obligations may be eliminated on the basis that there is "potential" competition, which may (or may not) develop over the next hundred years.[11] The absurdities of this argument are glaringly evident.

Even so, C&W USA would note that the market-opening provisions of the 1996 Act, and the unbundling provisions in particular, are *premised* on the assumption that there is a potential for the development of competition in the local markets. These provisions are intended to enable the realization of that potential, and hence until viable alternatives to ILEC UNEs actually are available for use by competitors for imminent market entry, competitors will be impaired without access to the monopoly ILEC facilities. Congress adopted the UNE provisions of Section 251 to catalyze immediate market entry -- not entry only after one year or two years, or "potential" entry at some undetermined future time. The Commission should refuse to tolerate these efforts to use the "impair" standard to retard competitive entry.

B. Section 251(d)(2) Is Not A Codification of the Essential Facilities Doctrine.

In yet another unavailing attempt to craft an "impair" standard that would effectively eviscerate the viability of market entry through reliance on UNEs, the ILECs have argued either that Section 251(d)(2) is a codification of the essential facilities doctrine of antitrust theory, or, more loosely, that the essential facilities doctrine should inform the Commission's interpretation

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9 Ameritech at 35-36.

10 BellSouth at 15-16, 70-71.

11 *See, e.g.*, Bell Atlantic at 14; U S West at 13-14.

of Section 251(d)(2).[12] Generally, under the essential facilities doctrine, a facility (or element) is essential (or must be provided on an unbundled basis) if it is essential to a competitor's viability in the market, the competitor cannot practically or reasonably duplicate the facility or obtain it from another source, and lack of access to the facility will have anticompetitive effects on the market.

Despite the ILECs' efforts to superimpose the essential facilities doctrine on the "impair" standard, the essential facilities doctrine must be considered irrelevant to an evaluation of whether an element must be unbundled. Although in its *Iowa Utilities Board* decision the Supreme Court acknowledged, and effectively anticipated for purposes of this proceeding, the ILECs' argument, the Court certainly did *not* endorse application of the essential facilities doctrine to Section 251(d)(2).[13] Indeed, any such endorsement would have been surprising, in that there is no basis in the language of the 1996 Act for application of the essential facilities doctrine to a Section 251(d)(2) analysis, and, moreover, any such application would be inconsistent both with the procompetitive goals of the Act and the policies of the FCC.

First, the plain language of Section 251(d)(2) bears no evidence of any attempt by Congress to adopt or incorporate in whole or in part the essential facilities doctrine. Congress deliberately chose the very distinct "impair" standard for Section 251(d) -- *not* a standard that requires a showing that unbundled access to an element is "essential." The essential facilities doctrine has been an established part of antitrust jurisprudence for decades; Congress easily could have incorporated -- *but chose not to* -- that standard into the text of Section 251(d). In

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12 *See, e.g.*, Ameritech at 28-32; BellSouth at 72-73; GTE at 15; USTA at 63; U S West at 6-7.

13 The Court expressly noted that "some other standard" may have been what Congress intended. *Iowa Utilities Bd.*, 119 S. Ct. at 734.

addition, imposing an essential facilities requirement through Section 251(d)(2) would be inconsistent with the language of other provisions of the 1996 Act. Section 601(b)(1) of the 1996 Act expressly preserves the rights of competitors to traditional antitrust remedies, thereby indicating that Congress intended to bestow on competitors new and additional rights and remedies under the Act -- including both Section 251(d)(2) and Section 251(c)(3) -- as a means of ensuring the development of competition in the local markets.

Clearly, the 1996 Act represents an effort to promote competition that extends beyond the traditional antitrust enforcement scheme. The 1996 Act rests on the premise that conditions necessary for the maintenance of competitive local markets do not exist, and hence imposes on incumbents affirmative obligations to take procompetitive steps to open their markets to competition. The antitrust laws, however, as embodied in the Sherman Act, assume the opposite, and generally only come into play, as a reactive measure, when monopolists take steps to repress competition. Accordingly, the essential facilities doctrine serves an entirely different, and far narrower, purpose than the market-opening provisions of the 1996 Act. The affirmative procompetitive obligations imposed on incumbents by the Act must be interpreted broadly so as to facilitate the rapid development of competition.

Finally, C&W USA would note that acceptance of the ILECs' proposed essential facilities standard would require the Commission to reverse its well-founded conclusion that the Act was intended to promote equally all three methods of market entry: as the Commission has noted, the Act "neither implicitly nor explicitly expresses a preference for one particular entry strategy."[14] The ILECs' essential facilities arguments are based on the assumption that facilities-

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[14] *Local Competition First Report and Order*, ¶ 12

based deployment is central to the realization of the goals of the 1996 Act, and hence is a preferred entry strategy. Clearly, however, as the competitive commenters have emphasized, the Act promotes the other two methods of entry, as well, in part to encourage and promote the rapid development of facilities-based competition.

As discussed above, the record demonstrates that competitors use UNEs as one component of many different approaches to market entry, whether in conjunction with the other two entry techniques or as part of an all-elements approach. Many of these competitors will ultimately transition to facilities-based service, in large part or in whole. The Commission must not at this time adopt approaches urged by the ILECs which will result in the promotion of one method of entry over others. Such an approach necessarily involves the agency in choosing "winners" and "losers" in the marketplace. This result is inconsistent with the Act, the Commission's policies, and, indeed, with the Supreme Court's decision. Again, C&W USA would urge the Commission to keep in mind that the principal goal of the Act -- and therefore, the Commission's primary obligation in implementing the Act -- "is to ensure that *all* pro-competitive entry strategies may be explored."[15]

II. THE COMMISSION MUST ADOPT NATIONAL, UNIFORM, MINIMUM UNBUNDLING REQUIREMENTS IN ORDER TO PROMOTE WIDESPREAD COMPETITION ON A NATIONWIDE BASIS.

The record reveals overwhelming support, both from competitive providers spanning the industry and from state commissions, for the Commission's tentative conclusion that national, uniform, minimum unbundling requirements remain critical to the development of local

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15 *Local Competition First Report and Order*, ¶ 12 (emphasis added).

competition on the national basis contemplated by the 1996 Act.[16] The commenters make clear that, as C&W USA discussed in its comments, only by adopting nationwide unbundling rules can the Commission fulfill the primary role assigned it in Section 251. Specifically, national UNEs continue to remain critical to: (i) permitting requesting carriers to take advantage of ILEC economies of scale; (ii) providing financial markets with greater certainty in assessing competitors' business plans; (iii) facilitating the states' ability to conduct any necessary arbitrations; and (iv) reducing the likelihood of duplicative and wasteful litigation regarding the requirements of section 251(c)(3) which strain the resources of both providers and state commissions.[17]

Despite the virtual unanimity of the members of the competitive community, the state regulatory authorities, *and* the FCC itself, the ILECs have (not unexpectedly) universally rejected the Commission's national UNE approach, and have urged the agency to apply the Section 251(d)(2) unbundling standards on a far narrower geographic basis.[18] The commenters have demonstrated that the ILECs' various geographic approaches, however, are entirely without legal, policy, or practical justifications. Indeed, C&W USA would emphasize in this regard that creation of UNE lists -- and, more specifically, application of the impairment analysis -- on a

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16 *See, e.g.*, AT&T at 29-30, 40; CoreComm at 11, 15; General Services Administration at 3; Illinois CC at 2; Joint Consumer Advocates at 4; Level 3 at 3; MCI WorldCom at 4-5, 11; McLeod at 2-3; MGC at 2-3; Net2000 at 3-4; Nextlink at 3-5; NorthPoint at 1-3; Kentucky PSC at 2; New York DPS at 4; Oregon PUC at 1; Ohio PUC at 4; Texas PUC at 1, 4; Qwest at 32; Washington UTC at 3; Competitive Policy Institute at 4; Connecticut DPUC at 3-5; Iowa UB at 2, 6; Covad at 1-8; KMC at 3-4, 16.

17 *See Local Competition First Report and Order*, ¶¶ 241-48.

18 *See, e.g.*, Ameritech at 5, BellSouth at 13-14, 31, 66; GTE at 21; SBC at 15; U S West at 22-30.

geographic basis as proposed by the ILECs would result in endless controversy, dispute, and litigation.

In fact, this undoubted result suggests that the ILECs' primary purpose is to ensure that they retain a substantial tactical advantage over competitors in that *no other carriers* would have the resources or presence necessary to engage in a region-by-region impairment analysis in any meaningful manner. With the creation of hundreds of litigation "battlefields," carriers such as C&W USA would have no hope of winning this war. Only national unbundling rules will allow carriers such as C&W USA to pursue (without being stymied by burdensome and useless adversarial proceedings) efficient entry strategies that build off their existing networks and customer base. Unbundling rules that vary by market or by state, and that continually are subject to change, effectively would preclude C&W USA and other similarly situated carriers from adopting a sensible local business plan.

III. APPLICATION OF THE IMPAIR STANDARD MANDATES THAT ELEMENTS NECESSARY FOR THE PROVISION OF INTEGRATED ADVANCED SERVICES BE PROVIDED ON AN UNBUNDLED BASIS.

Multiple commenters, including C&W USA, have urged the Commission to modify and augment the existing UNE definitions in Section 319 in order to ensure that competitors -- and particularly new entrants -- can use UNEs and UNE combinations to offer consumers a full range not only of advanced telecommunications and information services, but also other innovative service offerings.

A. The Record Demonstrates That Elements Necessary For The Provision Of Advanced Services Must Be Provided On An Unbundled Basis.

In their comments, C&W USA and other competitive providers of integrated broadband voice and data services urged the Commission to require incumbents to provide unbundled

access to those elements necessary to promote the development and deployment of advanced services, as mandated by Section 706 of the Act.[19] These commenters have stressed that, as the Commission recognized in its *Advanced Services First R&O*, it is "critical" that the marketplace for advanced broadband services be conducive to investment, innovation, and meeting the needs of consumers.[20] In the *Advanced Services First R&O* the Commission reinforced its commitment to "removing barriers to competition" so that competitors are able to compete effectively with incumbents and their affiliates in the provision of advanced services.[21]

C&W USA urges the Commission to take this opportunity to remove even more barriers to market entry and recognize that the elements necessary for the provision of advanced services -- including clean copper and high capacity loops, dark fiber, multiplexing facilities (including integrated digital loop carriers and digital subscriber line access multiplexers), packet switches, and packet transport -- are not yet widely available in a fully competitive wholesale market. Accordingly, C&W USA submits that it is essential for the timely development and deployment of advanced services that incumbents be required to make these elements available on an unbundled basis.

The incumbents have argued vigorously against imposing an unbundling requirement on elements used to provide advanced services, generally relying on the proposition that advanced telecommunications functionalities "could not possibly meet" the "necessary" and "impair"

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19 *See, e.g.*, ALTS at 41-48; CompTel at 30-46; e.spire/Intermedia at 29-30; Qwest at 58-59, 72-73, 80-81, 88-91.

20 *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket 98-147 (rel. Mar. 31, 1999) ("*Advanced Services First R&O*"), ¶ 2.

21 *Advanced Services First R&O*, ¶ 3.

standards.[22] Specifically, the ILECs have offered the following assertions as support for their stance against the widespread development and deployment of advanced services through UNEs: (1) because advanced services technology is just now being deployed, the ILECs can have no advantages arising out of their monopolistic heritage; (2) requiring unbundling will discourage investment in advanced services functionalities by both incumbents and competitors, contrary to the purpose of Section 706; and (3) equipment used to provide advanced services has been deployed on a broad scale by CLECs and cable companies and therefore is widely available.[23]

Tellingly, these arguments are not dissimilar to the positions that the ILECs have taken with respect to virtually all of the elements now on the UNE list and to UNE combinations. Just as their arguments avail them nothing in the context of existing UNEs, as the record demonstrates, so too are their assertions regarding advanced services UNEs both unpersuasive and indicative of their ongoing unwillingness to concede any trace whatsoever of the advantages of incumbency. Quite simply, the ubiquity of the ILECs' networks and functionalities translates into an enormous advantage in the provision of all telecommunications services, whether basic or advanced. Their current positions of undeniable dominance in the local markets, along with the revenues generated thereby, enable the ILECs to make investments in advanced services where their competitors are still making substantial investments in an attempt to gain a foothold in the basic local markets. Those CLECs and cable companies that already have made investments in advanced services facilities clearly do not share those advantages.

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22 Ameritech at 119; *see also* Bell Atlantic at 39-45; BellSouth at 44; GTE at 73-79; SBC at 65; U S West at 56-60.

23 *See, e.g.*, Ameritech at 119, 120-122; Bell Atlantic at 39-45; BellSouth at 44; GTE at 73-79; SBC at 65; U S West at 56-60.

Given that consumers are increasingly expecting and demanding to receive a full package of integrated telecommunications services, the provision of advanced services will become -- indeed, to some extent already has become -- inextricably linked with the provision of basic local services, and, of course, ultimately with the provision of long distance services. Accordingly, the ILECs' position of dominance in the local markets will translate in the short term into an advantage in the market for fully integrated services. Requiring the ILECs to provide access to their advanced services networks and functionalities will enable competitors to enter the advanced services market more rapidly, efficiently, and effectively, and to continue the ongoing process of building out their own basic local networks and investing in their ability to provide advanced services independently of the ILECs. Clearly, both Section 706 and the general procompetitive goals of the 1996 Act will be served by this result.

B. The Commission Must Ensure That ILECs Provide Access To UNE Combinations, Including The UNE Platform.

In the *Second FNPRM* the Commission noted that the ability of carriers to use unbundled elements, *including* combinations of elements (such as the UNE platform), "is integral to achieving Congress' objective of promoting rapid competition in the local telecommunications market."[24] Many commenters, including C&W USA, have urged the Commission to ensure that, consistent with the Supreme Court's *Iowa Utilities Board* decision, ILECs provide nondiscriminatory and unrestricted access to combinations of network elements.[25] As C&W

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24 *Local Competition First Report and Order*, ¶ 2.

25 *See, e.g.*, ALTS at 77-86; AT&T at 136-37; CompTel at 47-52; e.spire/Intermedia at 8-9; Excel at 12-16; Nextlink at 41-47.

USA explained in its comments, competitive use of UNE combinations is crucial to the expeditious development of genuinely competitive, widespread, local voice and data markets.

Again, not unexpectedly, the ILECs have attacked this most critical of market entry strategies, with an argument totally lacking any basis in fact or in law. The ILECs generally contend that provision of UNE combinations (and, indeed, even unbundling of single elements) significantly diminishes the incentives for competitors to invest in constructing their own networks.[26] The record demonstrates, however, that access to UNEs, and, more particularly, to UNE combinations, actually enhances long-term investment in alternative facilities by competitive providers. UNE combinations expedite the rapid competitive entry contemplated in the Act by enabling competitors to, where necessary, build a customer base, raise capital, and deploy their own alternative facilities as efficiently as possible. Finally, as commenters have pointed out, no competitor motivated to maximize profits and competitive mobility will be inclined to remain dependant on their chief competitors (the ILECs) for any longer than is absolutely necessary.

Alternatively, in the case of competitors like C&W USA that have existing facilities and large customer bases spread throughout the country, access to UNE combinations permits the implementation of business plans that expand the provision of services to existing customers while building out to new customers. Until competition in the local markets is fully developed, competitors will adopt varying entry strategies -- including the hybrid facilities-based/UNE approach used by C&W USA -- as a means of establishing themselves as viable alternatives to

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26 *See, e.g.*, Ameritech at 24-26; Bell Atlantic at 1-2, 10, 17-18; SBC at 76-77.

the ILECs. Each of these business models is consistent with the unbundling provisions of Section 251(d)(2) and the broader, procompetitive goals of the Act.

Moreover, UNE combinations facilitate the development of innovative service offerings and packages, notably for value-added providers that offer new or more effective ways of using existing services, infrastructure, or technologies. UNE combinations enable such innovations principally because the value-added provider is not required to duplicate the ubiquitous ILEC facilities, can share the underlying network functionalities, and hence is able to invest elsewhere -- creating, for example, new software-related applications, pricing and billing schemes, and attractive integrated packages of retail services.

In the long distance market, for example, innovation has been spurred precisely because there are a multitude of competitors pursing different entry strategies. When C&W USA first entered the U.S. long distance market, it did so as a pure reseller. This did not hinder the company's ability to provide innovative products to its customers, or affect its incentives to build out its own facilities. In fact, C&W USA was able to innovate by providing its customers with sophisticated billing options that they could use as tools for their own businesses. As C&W USA expanded its presence in the market, it began to deploy more and more of its own facilities, so that it now operates its own nationwide network supporting a wide variety of voice and data services. Without unbundled access to UNE combinations, end-user consumers will be denied the advantages of similar innovations that competitors have the incentives to make in order to compete effectively with the incumbents.

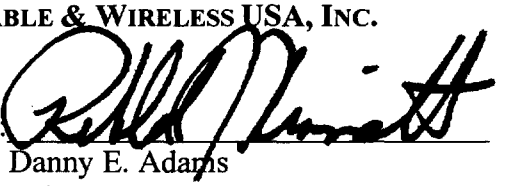
CONCLUSION

The market-opening provisions of the 1996 Act, with regard to the ILECs, are premised on a very simple concept of "give and take," embodied to a large extent in Sections 251 and 271. While the Act requires the ILECs to abandon their unchallenged positions of incumbency in the local markets and to share their economies of density, connectivity, and scale with competitors, the Act also permits them to enter the lucrative long distance markets. While the ILECs have gone to great lengths (albeit, not altogether successfully) to take advantage of the benefits of Section 271, they have gone to even greater lengths to avoid compliance with Section 251 -- and, particularly, with the network element unbundling obligations of Section 251(c)(3). C&W USA urges the Commission to use this proceeding to reaffirm its commitment to the promotion of competition through the use of unbundled network elements. Until the vestigial advantages of monopolistic incumbency have been eroded sufficiently, the Commission must continue to pursue an unbundling policy that forces ILECs to open their networks in a manner that encourages both rapid and enduring competition.

For the foregoing reasons, the Commission should reject the ILECs' efforts to eviscerate the reach of Sections 251(d) and 251(c)(3), and act promptly to redefine UNEs in furtherance of the Act's goal of creating and maintaining robust competition in the local markets. In that regard, the Commission should interpret the terms "necessary" and "impair" to promote the objectives of lowering barriers to market entry and encouraging the widespread introduction of competition and innovative new services for end users.

Respectfully submitted,

CABLE & WIRELESS USA, INC.

By: 

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June 10, 1999

CERTIFICATE OF SERVICE

I, Rebekah J. Kinnett, hereby certify that on this 10th day of June, 1999 copies of the foregoing Reply Comments of Cable Wireless USA, Inc. were served by hand on the following:

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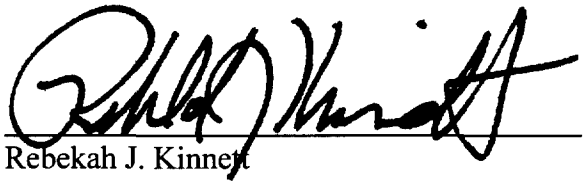

Rebekah J. Kinnett